

Statement by Bill Wigert
Hearing of the MLPA
North Central Coast Stakeholder Group
March 18, 2008

I have been a member of the Sierra Club since 1970. As an attorney I have represented the Sierra Club and other environmental organizations, including the Environmental Defense Fund, in lawsuits pursuing environmental goals.

I am supportive of the MLPA and the work of the North Coast Regional Stakeholder Group – with the exception of the plan to discontinue oyster cultivation in Drake's Estero.

I believe that shellfish cultivation in Drake's Bay is environmentally the right choice. I am here today to discuss four points:

1. There has been a lot of misinformation propagated by the Park Service and environmental groups about what will happen when the current federal lease with Drake's Bay Oyster Co. terminates in 2012. In fact, the oyster farm operation will not necessarily end in 2012, nor will Drake's Estero become full wilderness in 2012.
2. The elimination of shellfish cultivation in Drake's Estero is inconsistent with the laws and policies of the State of California.
3. The elimination of shellfish cultivation in Drake's Estero is inconsistent with the laws and policies of the United States of America.

4. The biggest stakeholders in North Central Region – our two elected Senators and our Representative in the House of Representatives -- have strongly voiced their support for shellfish cultivation.

I. My concern is that members of the Group may have been misled to believe that with expiration of the lease in 2012 that Drake's Bay Oyster Co and the Department of the Interior that shellfish cultivation will necessarily have to end and Drake's Estero will qualify for full Wilderness Designation..

Neither of these outcomes are likely. The Point Reyes Wilderness was created in 1976 along with another 12 wilderness areas. This is what the law actually says about the Point Reyes Wilderness:

“That in accordance with section of the Wilderness Act the following lands are hereby designated as wilderness:

(k) Point Reyes National Seashore, California, wilderness comprising twenty-five thousand three hundred and seventy acres, and **potential** wilderness additions comprising eight thousand and three acres.

There is nothing in the Act about oyster farming. There is nothing in the act that says that shellfish cultivation must end in 2012. There is nothing in the Act about oyster farming being “phased out”.

It is the legislative history that shows why Drakes Estero couldn't be classified in 1976 as Wilderness and why it still can't today

In the portion of the Wilderness Act that I just read it refers to “...8003 acres are to be designated as **potential wilderness**”. What does potential wilderness mean? The Act itself doesn't define “potential wilderness.” We must go to the legislative history to help us to understand what the intent of Congress was in passing this legislation.

The initial legislation would have provided for approximately 33,000 acres of full wilderness protection. This was reduced by 8003 acres as a result of the position take by the Department of the Interior.

What appears in the Legislative History is a letter dated September 8, written by John Kyl, then Assistant Secretary of the Interior to Congress. Mr. Kyl recommended that certain areas of Point Reyes that had initially been included in the pending bill as “wilderness” be designated instead as “potential” wilderness instead. Mr. Kyl sets forth the reasons why 8,003 acres of the park did not qualify as wilderness. Three of these, bear on the wilderness status of Drake’s Estero:

“We do not recommend the inclusion of this additional acreage which includes the following major components for wilderness designation for the following reasons:

(1) Tidelands extending ¼ mile offshore. The State of California retains mineral and fishing rights over the submerged lands. The reservation of such rights is inconsistent with wilderness.

(2) Drakes Estero. Commercial oyster farming operations take place in this estuary and the reserved rights by the State on tidelands in this area make this acreage inconsistent with wilderness.

(3) “...The portions of the former ‘pastoral zone’ included as wilderness in S. 2472 are now in Federal ownership but are subject to a special use permit which permits the use of roads, mechanical equipment, fences, water impoundments, and corrals, as well as the use of pesticides and herbicides. While it is expected that these uses will terminate in about 30 years, **the land has been managed for grazing for at lease [sic] three generations and doe not appear to be in a wilderness condition.**”

So the rule of the land is simple and straightforward: so long as the state of California has fishing and mineral rights, so long as grazing continues on lands adjacent to Drakes Estero, Drakes Estero will always be potential wilderness, even if the lease to the oyster farm is not extended past 2012.

But the Secretary of the Interior has the right to extend this lease. This was provided in the enabling legislation for the Point Reyes National Seashore:

“Where appropriate in the discretion of the Secretary [of the Interior], he or she may lease federally owned land or any interest therein which has been acquired by the Secretary....”

While the present Park Service may not be thinking about extending the lease, who is to say what another Secretary of the Interior in another administration might do when it comes to extending the lease, particularly given the support our two Senators and Representative have given to bivalve cultivation.

II. The State of California has had a significant interest in shellfish cultivation since the time the Park was formed.

Significantly the reason the State of California retained fishing and mineral rights – and why you are here today to make decision about fishing in Drake’s Estero -- is that California made it a condition, in transferring state lands to help create the Point Reyes National Seashore, to retain these rights. This act was passed and approved by the governor on July 9, 1965.

Section 2 exempts from the grant of the land underlying “navigable waters situated with the boundaries” within the Park mineral rights and Section 3 states: “There is hereby reserved to the people of the state the right to fish in the waters” over the land ceded to the Park.

The state continues to exercise its rights by granting a lease to Drake’s Bay Oysters until 2029

The state of California clearly has a big stake in the present oyster operation in Drake’s Estero. The magnitude of the lease is enormous – it represents 50% of the state’s total leased shellfish waters. The oyster farm provides employment as well as monetary proceeds to the state. It is environmentally friendly. But I’ll leave that to others to speak about.

Has the state of California shown any other interest in oyster cultivation? It certainly has. The State of California passed the Shellfish Protection Act of 1993. In passing this Act, the State declared:

“The Legislature finds and declares all of the following:

(a) Commercial shellfish harvesting is a beneficial use of the waters of the state and, in addition, benefits the economy of the state through the creation of jobs.”

In granting a the lease extension unto 2029 to the Drakes Bay Oyster Company in 2005, the Fish and Game Commission of the State of California concluded:

“WHEREAS, the Fish and Game Commission determined that a lease renewal was in the best interest of the State of California at the June 25, 2004, meeting in Crescent City, California and approved the renewal based on the renegotiated lease terms recommended by the Department of Fish and Game”

III. Congress recognized the importance of aquaculture, including shellfish cultivation, with the passage of the National Aquaculture Act of 1979. This Act elevates the importance of aquaculture to the highest level:

“Congress declares that aquaculture has the potential for reducing the United States trade deficit in fisheries products, for augmenting existing commercial and recreation fisheries and for producing other renewable resources, thereby assisting the United States in meeting its future food needs and contributing to the solution of world resource problems. It is therefore, in the national interest, and it is the national policy to encourage development of aquaculture in the United States”

What follows are some of the Findings of Congress as well as the Purpose of passing this Act:

“(a) Findings

Congress finds the following:

(1) The harvest of certain species of fish and **shellfish** exceeds levels of optimum sustainable yield, thereby making it more difficult to meet the increasing demand for aquatic food.

(2) To satisfy the domestic market for aquatic food, the United States imports more than 50 per centum of its fish and **shellfish**, but this dependence on imports adversely affects the national balance of payments and contributes to the uncertainty of supplies.

(3) Although aquaculture currently contributes approximately 13 percent of the world seafood production, less than 6 percent of current United States seafood production results from aquaculture. Domestic aquaculture production, therefore, has the potential for significant growth.

(5) The rehabilitation and enhancement of fish and **shellfish** resources are desirable applications of aquacultural technology.

(6) The principal responsibility for the development of aquaculture in the United States **must rest with the private sector**.

(7) Despite its potential, the development of aquaculture in the United States **has been inhibited by** many scientific, economic, legal and production factors, such as inadequate credit, diffused legal jurisdiction, the lack of management information, **the lack of supportive Government policies**, and the lack of reliable supplies of seed stock.

(b) Purpose

It is the purpose of the chapter to promote aquaculture in the United States by:

(1) Declaring a national aquaculture policy;

(2) Establishing and implementing a national aquaculture development plan;

(3) Establishing the Department of Agriculture as the lead Federal agency with respect to the coordination and dissemination of national aquaculture information by designating the Secretary of Agriculture as the permanent chairman of the coordinating group and by establishing a National Aquaculture Information Center within the Department of Agriculture; and

(4) Encouraging aquaculture activities and programs in both the public and private sectors of the economy;

That will result in increased aquaculture production, the coordination of domestic aquaculture efforts, the conservation and enhancement of aquatic resources, the creation of new industries and job opportunities, and other national benefits. (highlights added)".

IV. The policies of the State of California and the Policies of the United States have not been ignored by the biggest stakeholders in the North Central Coast

On February 13, 2008, Senator Boxer, supported by Senator Feinstein and Representative Woolsey, introduced S.2635 to be cited as the “Gulf of the Farallones and Cordell Bank National Marine Sanctuaries Boundary and Modification and Protection Act”. The stated purposes of this bill is to extend the boundaries of these two sanctuaries, to strengthen the protections that apply in the sanctuaries, to educate and interpret for the public regarding those marine environments, and **to manage uses of the sanctuaries.**

Various prohibitions for human uses are set forth in the proposed legislation. But one activity – bivalve farming – is specifically permitted. See Sec.6(b)(2).

These representatives are the largest stakeholders in the state of California. It is clear that they support shellfish farming.

I urge this group to support shellfish farming by not excluding the shellfish farm in Drake’s Estero